

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

United States of America, - Docket No. 3:15-cr-024-1
-
Plaintiff, - Toledo, Ohio
- June 27 2016
v. - Sentencing
-
Aroldo Rigoberto -
Castillo-Serrano, -
-
Defendant. -

TRANSCRIPT OF SENTENCING HEARING
BEFORE THE HONORABLE JAMES G. CARR
UNITED STATES DISTRICT JUDGE.

APPEARANCES:

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Proceedings recorded by mechanical stenography,
transcript produced by notereading.

1 (Commenced at 11:32 a.m.)

2 THE COURT: I think you're all aware I

00:00:03 3 raised the question of whether I can unseal that. I've
00:00:06 4 asked Myrna. She didn't see any reason why I can't, the
00:00:09 5 offense conduct part, and I forgot that David was here
00:00:14 6 while that went on. And that's why I called him up to
00:00:18 7 fill him in, because I've been here since 9:30. So you
00:00:23 8 have thought about it?

00:00:25 9 MS. MULHAUSER: Your Honor, we reviewed the
00:00:26 10 Pretrial Services -- the Presentence Report. We have no
00:00:30 11 objection to unsealing that offense conduct. Also Ana
00:00:35 12 Angelica Pedro Juan's Plea Agreement is already
00:00:38 13 unsealed. So all of that is already public record.
00:00:42 14 With respect to the victim impact statements, we would
00:00:45 15 like to have more time to review those.

00:00:47 16 THE COURT: That's fine. The flavor of them
00:00:51 17 is in the offense conduct statement. We can accomplish
00:01:01 18 what I'm trying to accomplish. So we don't have to
00:01:05 19 simply sit here and wonder what we're talking about.
00:01:08 20 I'll ask the same thing of Merle.

00:01:14 21 Myrna, if nobody has an objection to the
00:01:30 22 disclosure of those paragraphs, the Offense Conduct, is
00:01:34 23 it okay with you?

00:01:35 24 I'll make a copy of that segment and simply
00:01:40 25 file it. I'll call it Government's Exhibit C just for

00:01:44 1 the record so we know what we're talking about. This is
00:01:48 2 son Castillo-Serrano right now. When Merle comes down
00:01:52 3 we'll ask Merle.

00:01:55 4 MR. KLUCAS: I should put my consent on the
00:01:57 5 record. So on behalf of Mr. Castillo-Serrano, we don't
00:02:00 6 have any objection to the relevant conduct portion of
00:02:03 7 the Plea Agreement.

00:02:04 8 THE COURT: What is the offense -- what's
00:02:06 9 the technical --

00:02:08 10 MR. KLUCAS: The Offense Conduct in the PSR.

00:02:12 11 THE COURT: Well, the Plea Agreement in your
00:02:15 12 case is --

00:02:18 13 MS. MULHAUSER: No, no. Her plea agreement
00:02:20 14 is public.

00:02:23 15 MR. KLUCAS: That portion only.

00:02:40 16 THE COURT: We'll redact the case agent and
00:02:44 17 counsel's name.

00:35:14 18 (Recess taken.)

00:37:11 19 THE COURT: I'm reviewing what's been marked
00:37:14 20 Court's Exhibit B.

00:38:22 21 Mr. Klucas, there's been evidence provided.
00:38:31 22 You are not to provide a copy of this to him.

00:38:35 23 MR. KLUCAS: He hasn't seen it.

00:38:36 24 THE COURT: I'm going to place it under
00:38:39 25 seal.

00:39:33 1 The reference, Mr. Klucas, to Defendant's
00:39:35 2 attorney in the document; is it an attorney in
00:39:38 3 Guatemala?

00:39:39 4 MR. KLUCAS: It is.

00:39:40 5 THE COURT: I assumed that.

00:44:19 6 THE CLERK: 3:15-CR-24-1, United States of
00:44:24 7 America versus Aroldo Castillo-Serrano. Matter called
00:44:29 8 for continued sentencing.

00:44:31 9 THE COURT: Let the record show the
00:44:32 10 defendant is present in court with his attorney, David
00:44:34 11 Klucas. The government is represented by AUSA -- I'm
00:44:41 12 sorry; your name?

00:44:41 13 MS. MULHAUSER: Dana Mulhauser for the
00:44:45 14 United States.

00:44:45 15 THE COURT: Your colleague is?

00:44:47 16 MS. MULHAUSER: My colleague is Chelsea Rice
00:44:49 17 with U.S. Attorney's Office in Cleveland, Ohio; and Matt
00:44:52 18 Komar, special agent for the FBI.

00:44:54 19 THE COURT: Agent, what is your duty
00:44:56 20 station, just for the record, or where was it at the
00:44:59 21 time of this investigation?

00:45:02 22 MR. KOMAR: Mansfield, Ohio.

00:45:05 23 THE COURT: I realize I might have already
00:45:07 24 covered that.

00:45:09 25 Also present is Ms. Myrna Greenwood who,

00:45:12 1 quite candidly, has done a wonderful service on all
00:45:19 2 these cases.

00:45:20 3 Counsel, have you each received and reviewed
00:45:23 4 the Presentence Report? If so, do you have objections
00:45:26 5 other than those previously made? If not, are you
00:45:28 6 prepared to proceed with sentencing?

00:45:30 7 MS. MULHAUSER: The United States does not
00:45:31 8 have objections other than the ones previously made.

00:45:34 9 MR. KLUCAS: Likewise, Your Honor. Other
00:45:35 10 than the objections already made, we have no new
00:45:38 11 objections, and we're prepared to proceed.

00:45:43 12 THE COURT: Remind me. I'm sorry; I
00:45:46 13 neglected to check. Have I ruled on any of the
00:45:50 14 objections?

00:45:51 15 MS. MULHAUSER: Your Honor, there are
00:45:52 16 several that have been ruled on, and several that
00:45:54 17 remain. So under consideration at the last hearing was
00:45:57 18 whether the vulnerable victim enhancement applied and
00:46:01 19 whether the large number applied. If I recall
00:46:04 20 correctly, Your Honor found in favor of the United
00:46:06 21 States with both of those.

00:46:07 22 There remain several enhancements that
00:46:09 23 neither side requested in the Plea Agreement that
00:46:11 24 nevertheless Probation found that Your Honor has not
00:46:13 25 ruled on.

00:46:14 1 THE COURT: Okay. Mr. Klucas, is that
00:46:17 2 correct?

00:46:17 3 MR. KLUCAS: That's my recollection, Judge.
00:46:19 4 I had a minute to talk to Ms. Mulhauser.

00:46:21 5 THE COURT: And there is a pending
00:46:22 6 Government motion. Have I ruled on that?

00:46:25 7 MS. MULHAUSER: Your Honor, I believe there
00:46:26 8 are certain items still pending on that that we may want
00:46:29 9 to discuss at the bench before that's ruled on.

00:46:32 10 THE COURT: And then, counsel, why don't you
00:46:34 11 approach for a moment, please.

00:46:38 12 Myrna, come around, please.

13 (The following discussion was had at the
14 bench outside the hearing of the courtroom and was
15 sealed by order of the Court:)

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SEALED PORTION OF TRANSCRIPT

00:55:58 1 (End of sealed portion of transcript.)

00:56:19 2 THE COURT: Simply as the starting point for
00:56:23 3 today's proceedings, the Guideline Base Offense Level is
00:56:29 4 a 34; Criminal History Category of II, and there are a
00:56:33 5 number of other matters I have to resolve, but a 34,
00:56:41 6 Level II, is a 168 to 210 Guideline Range.

00:56:47 7 Counsel, do you agree with that?

00:56:50 8 MS. MULHAUSER: Yes, Your Honor. Does that
00:56:50 9 mean that you are making rulings as to number 61, 62
00:56:53 10 and --

00:56:56 11 THE COURT: As presently written, that's my
00:56:59 12 understanding. And I understand there are various
00:57:03 13 unresolved concerns.

00:57:07 14 MS. MULHAUSER: If those are still
00:57:08 15 unresolved, the Government is in agreement with that as
00:57:11 16 a calculation.

00:57:12 17 THE COURT: I'm saying taking what's in
00:57:14 18 front of me, running numbers, I come up with a 34 and
00:57:17 19 II, subject to further discussion one way or the other.

00:57:21 20 MS. MULHAUSER: The Government is in
00:57:22 21 agreement.

00:57:29 22 THE COURT: Correct, Myrna, according to
00:57:31 23 your computations?

00:57:32 24 MS. GREENWOOD: Correct.

00:57:34 25 THE COURT: I want a baseline for what

00:57:36 1 remains unresolved.

00:57:48 2 I have Government's Exhibit -- Court's
00:57:52 3 Exhibit B.

00:57:54 4 MR. KLUCAS: Is that how you're referring to
00:57:56 5 the report, so I can make a note?

00:57:58 6 THE COURT: Yes. The document they received
00:58:01 7 this morning relative to the efforts being undertaken to
00:58:06 8 have the property restored. I'll refer to it as Court
00:58:12 9 Exhibit Number 2. That will be placed under seal
00:58:17 10 because of the nature of much of the material contained
00:58:22 11 in there. So that -- although the offense conduct
00:58:27 12 portion will be made public, this exhibit will not be
00:58:32 13 made public.

00:58:34 14 Now let's turn to the objections. Let's
00:58:37 15 start with the Government, whether it has any objections
00:58:39 16 to any of these enhancements or other computations.

00:58:44 17 MS. MULHAUSER: Your Honor, are we
00:58:45 18 discussing Court Exhibit 2, or are we discussing --

00:58:49 19 THE COURT: We're discussing in the
00:58:50 20 Presentence Report.

00:58:51 21 MS. MULHAUSER: In the Presentence Report.
00:58:53 22 Thank you, Your Honor.

00:58:54 23 The Government is bound by the Plea
00:58:57 24 Agreement which states that we are not asking for these
00:59:00 25 enhancements. We are simply asking for a ruling from

00:59:02 1 Your Honor on whether they apply. And we would note
00:59:05 2 that similar enhancements were found to apply in a
00:59:08 3 co-defendant's sentencing that occurred very recently.

00:59:12 4 THE COURT: That being so, obviously I'm
00:59:16 5 inclined to apply them here. But, Mr. Klucas, go ahead.

00:59:19 6 MR. KLUCAS: I wasn't aware of what the
00:59:20 7 arguments pro or con were in the preceding sentencing.
00:59:24 8 I think I missed that part. I would indicate that, like
00:59:31 9 the Government, we believe the plea agreement should
00:59:35 10 dictate the scope of the Court's sentencing range. The
00:59:39 11 things that were found in the plea agreement
00:59:41 12 regarding -- I'm sorry, in the PSI regarding the
00:59:45 13 specific offense characteristics, particularly paragraph
00:59:49 14 61 -- well, let me start with 61, was a subject of some
00:59:55 15 dispute, debate, and animated discussion between defense
01:00:00 16 and the government prior to the Plea Agreement being
01:00:02 17 reached. The Government was willing to engage in plea
01:00:09 18 negotiations in a Plea Agreement that did not embrace
01:00:12 19 that specific offense characteristic. Quite frankly,
01:00:15 20 I'm not 100 percent that there was credible evidence
01:00:19 21 disclosed to support that offense characteristic. And
01:00:24 22 because there wasn't, at least in my opinion, credible
01:00:27 23 evidence disclosed to support that, we would object.

01:00:31 24 THE COURT: I disagree, and that enhancement
01:00:36 25 will be applied. Objection overruled. I find it

01:00:41 1 credible. I note the Defendant has pled guilty to a
01:00:44 2 conspiracy, and that among other charges.

01:00:50 3 Go ahead. Next?

01:00:54 4 MR. KLUCAS: The next one that I have was
01:00:57 5 64, but I believe the Court ruled on that already.

01:01:00 6 MS. MULHAUSER: Your Honor, if I may,
01:01:01 7 there's also 62. So 62, which is 2H4.1(b)(3)(A), which
01:01:13 8 is the length of time which the victims were held. So
01:01:17 9 according to the Plea Agreement, that should be a
01:01:20 10 plus-two for between 180 days and one year of servitude.
01:01:25 11 The Presentence Report found a plus-three for more than
01:01:28 12 one year. I would point Your Honor to the victim impact
01:01:32 13 statement of Victim Number 1 that Your Honor received
01:01:35 14 today. Again, we are asking only for what is in the
01:01:40 15 Plea Agreement.

01:01:41 16 THE COURT: Right. And just tell me,
01:01:43 17 please, what does that -- I'll take a look at it right
01:01:48 18 now.

01:01:49 19 MS. MULHAUSER: I'll point Your Honor to the
01:01:51 20 beginning of Paragraph 4.

01:02:01 21 THE COURT: I'm looking at what's been
01:02:03 22 numbered at page 1 of the first victim impact statement.

01:02:11 23 MS. MULHAUSER: The one that says at the top
01:02:12 24 Victim Impact Statement of Victim 1.

01:02:27 25 THE COURT: I'm sorry. I'm having some

01:02:29 1 trouble. What page is that on?

01:02:35 2 MS. MULHAUSER: Your Honor, I can approach
01:02:37 3 with it if you'd like me to. I don't know, either page
01:02:40 4 number --

01:02:41 5 THE COURT: I'm having -- I have some
01:02:43 6 reading problems. Maybe if somebody can help me out
01:02:45 7 here.

01:02:46 8 MS. MULHAUSER: I can also read it to Your
01:02:48 9 Honor.

01:02:48 10 THE COURT: If you want to read it in the
01:02:50 11 record, that's fine. Let's do it that way.

01:02:52 12 MS. MULHAUSER: The Victim Impact Statement
01:02:55 13 of Victim 1. This is signed on June 1, 2016, and there
01:02:59 14 is a signature from a certified -- from an individual
01:03:05 15 who translated it from Spanish to English saying it was
01:03:09 16 read back to the victim.

01:03:11 17 "Dear Honorable Judge, I am writing to you
01:03:13 18 to describe how I have been harmed by the people you are
01:03:16 19 sentencing. I am writing you a letter because I am
01:03:19 20 frightened of Aroldo and Juana. I am afraid of what
01:03:23 21 would happen to me or my family if they knew I was
01:03:26 22 telling you these things. This all started when a
01:03:28 23 neighbor back in my home country told me about a man who
01:03:31 24 could take people to the United States at a price. I
01:03:34 25 had a wife and children I was working to support at the

01:03:36 1 time. In order to come to the United States, I had to
01:03:40 2 leave a title to some land, the only property my dad
01:03:43 3 had, and I had to pay some money. My whole family was
01:03:46 4 living on the property I signed over to Aroldo's mother.
01:03:50 5 I hoped that I would work very hard in the United States
01:03:53 6 to get a home for my family and for my father. That was
01:03:56 7 not possible in my home country, but it would be
01:03:58 8 possible in the United States. I had no idea that I
01:04:00 9 would be charged so much money and work so long to pay
01:04:03 10 off the debt. After coming to the United States, I was
01:04:07 11 not allowed to talk to my family for at least four
01:04:09 12 months, when I was finally able to talk to my wife, she
01:04:12 13 was upset because I was not sending money to help my
01:04:15 14 family, but I could not send them money. All my money
01:04:18 15 was going to Aroldo. I could not ask Aroldo for money.
01:04:22 16 I was very fearful to ask him for a card to make a phone
01:04:26 17 call. Asking him for money was out of the question. I
01:04:28 18 was frightened of Aroldo. He was not someone you wanted
01:04:31 19 to upset. He would tell me that I could try to run away
01:04:34 20 from him, and I might even get away, but my family will
01:04:37 21 never be safe.

01:04:38 22 "I paid Aroldo for over two years working at
01:04:41 23 various egg farms. It was the same thing at every farm.
01:04:45 24 They would bring in people with no papers, so they could
01:04:47 25 pay them very little. Then Aroldo would take all of our

01:04:51 1 checks in big stacks and cash them. We got nothing for
01:04:55 2 our work. When Aroldo went back to Guatemala, that's
01:04:59 3 when a woman we knew as Juana took charge. She was just
01:05:03 4 like her Aroldo. She would take our checks and not give
01:05:06 5 us enough food. I know now that Juana's real name is
01:05:10 6 Angelica."

01:05:10 7 THE COURT: I now know that?

01:05:12 8 MS. MULHAUSER: "I now know that Juana's
01:05:17 9 real name is Angelica.

01:05:18 10 "In the egg farm I had to work very hard for
01:05:21 11 long hours six days a week. I had to sweep between the
01:05:24 12 rows of cages and shovel and scrape under the cages. I
01:05:27 13 would feed the chickens and mop and clean the floors.
01:05:30 14 If I did something wrong or the people who watched us
01:05:33 15 decided that I made a mistake, I would be punished.
01:05:36 16 Sometimes they would not give me time to stop and eat;
01:05:38 17 other times they would put me in the basement and make
01:05:41 18 me carry a big container full of liquid to spray down
01:05:44 19 the chicken poop to kill the bugs. I remember breaking
01:05:47 20 down in tears in the basement wondering what I was going
01:05:50 21 to do. We stayed in trailers when we worked in the egg
01:05:53 22 farm. I only had a few sets of clothes to wear. I did
01:05:56 23 not have a coat for the winter. The trailers were very
01:06:00 24 small. We would leave for work at 5:30 in the morning
01:06:03 25 be there until 5:30 in the evening and only got a little

01:06:07 1 to eat during the day. I remember asking neighbors at
01:06:10 2 the trailer park for food because we were so hungry. I
01:06:12 3 was out of contact with my family for a long time. I
01:06:16 4 did not have money to send them. I do not know how they
01:06:19 5 made it without any money from me.

01:06:20 6 "I only got my father's land back because a
01:06:24 7 man in my home country helped my family fight for it.
01:06:28 8 This was a hard time for my family. Thinking about all
01:06:30 9 the time I spent under the control of these people makes
01:06:32 10 me very sad. I did not do anything to deserve this. I
01:06:35 11 just wanted to help my family. I had big dreams, and
01:06:39 12 none of them have come true. It has been very difficult
01:06:42 13 for me to be away from my family this long. I declare
01:06:45 14 under penalty of law that the above information is true
01:06:48 15 and correct."

01:06:48 16 THE COURT: How does that affect the
01:06:50 17 guideline calculation with regard to that enhancement?

01:06:52 18 MS. MULHAUSER: Your Honor, there is a
01:06:53 19 sentence in the beginning of the fourth paragraph that
01:06:55 20 said, "I paid Aroldo for over two years working at
01:06:58 21 various egg farms."

01:06:59 22 THE COURT: That supports a higher level
01:07:01 23 enhancement?

01:07:02 24 MS. MULHAUSER: Your Honor, we do not argue
01:07:03 25 for a higher level of enhancement.

01:07:05 1 THE COURT: I understand. I'm asking
01:07:06 2 directly: Is it your understanding of the guidelines
01:07:08 3 that that would, if found to be correct --

01:07:11 4 MS. MULHAUSER: If two years was found to be
01:07:14 5 the correct period, then yes.

01:07:16 6 THE COURT: That's all. Just tell me what
01:07:18 7 the guideline range is. One second.

01:07:36 8 Mr. Klucas?

01:07:37 9 MR. KLUCAS: Once again, Judge, I'm going to
01:07:39 10 ask the Court to accept the parameters agreed to by the
01:07:42 11 parties within the context of the Plea Agreement. I
01:07:45 12 would confirm what Ms. Mulhauser says; there is a one
01:07:51 13 level Base Offense Level difference between what was
01:07:53 14 contemplated in the plea agreement and what was set
01:07:57 15 forth in the Presentence Report, and I would ask the
01:08:02 16 Court to follow the Plea Agreement.

01:08:03 17 THE COURT: No, I decline to do so. I don't
01:08:05 18 think that would reflect reality. And I realize that
01:08:10 19 was entered into in complete good faith by the Defendant
01:08:13 20 and Government in anticipation of what reality might be.
01:08:16 21 But it's proven not to be so. And to ignore that fact I
01:08:21 22 think would not be an appropriate exercise of my
01:08:23 23 discretion.

01:08:24 24 The next issue in terms of --

01:08:26 25 MS. MULHAUSER: Your Honor, the next issue,

01:08:28 1 as I believe we discussed on the record, Your Honor has
01:08:31 2 found both the vulnerable victim enhancement and the
01:08:34 3 large number of victims, so the only remaining issue is
01:08:38 4 Paragraph 88, which is the --

01:08:40 5 THE COURT: Which paragraph?

01:08:41 6 MS. MULHAUSER: 88 in the Presentence
01:08:44 7 Report, which is a one-level increase in the offense
01:08:47 8 level because of grouping.

01:09:04 9 THE COURT: Mr. Klucas?

01:09:08 10 MR. KLUCAS: I addressed that in my
01:09:09 11 sentencing memorandum. We don't believe grouping
01:09:12 12 applies for the reasons we stated in our memo.

01:09:15 13 THE COURT: I'm going to overrule that
01:09:16 14 objection and find that the one level increase for the
01:09:18 15 grouping computation is correct and appropriate. So
01:09:24 16 that means that the -- excuse me, Myrna, go ahead.

01:09:30 17 (Discussion had off the record.)

01:10:44 18 THE COURT: Counsel, my notes are confusing.
01:10:46 19 Remind me again what we started as a baseline.

01:10:49 20 MS. MULHAUSER: We started at a baseline of
01:10:52 21 34, plus two for the dangerous weapon, plus one for the
01:10:56 22 length of peonage, plus one for grouping, brings us to a
01:10:59 23 38 before acceptance of responsibility.

01:11:05 24 THE COURT: Mr. Klucas, would you agree with
01:11:07 25 that computation of the Base Offense Level?

01:11:09 1 MR. KLUCAS: Without waiving our objections,
01:11:10 2 I would certainly agree.

01:11:12 3 THE COURT: Let's talk about acceptance.

01:11:21 4 I have a document that indicates to me that
01:11:25 5 to some extent at least the properties which were taken
01:11:31 6 from the families have been or appear to be in the
01:11:35 7 process of being returned. I think that's correct. Let
01:11:39 8 me just check my copy. I'm looking at page -- they're
01:11:54 9 unnumbered. It would be the section that's headed
01:12:01 10 following, the answers that are of interest of the
01:12:08 11 Court. And Roman numeral small number ii, that
01:12:20 12 Defendant has yet to receive from this Defendant's
01:12:25 13 Guatemalan attorney the registered deed. Apparently
01:12:29 14 there is a distinction in Guatemala between a registered
01:12:33 15 and unregistered deed. Mr. Klucas, do you know anything
01:12:36 16 about what's going on in that regard? There are two or
01:12:39 17 three people in that situation where they -- things
01:12:42 18 appear to be underway, but the circle has not been fully
01:12:47 19 completed.

01:12:47 20 MR. KLUCAS: I can only tell the Court what
01:12:49 21 the attorney I hired in Guatemala and I surmise, which
01:12:54 22 is the attorney that handled those transfers both
01:12:58 23 originally and the return has failed to share the
01:13:02 24 urgency of the Guatemalan attorney and myself. I will
01:13:07 25 tell you that the lawyer that handled the transfers

01:13:10 1 could not have been any less interested in talking to
01:13:13 2 me, and so I haven't really been able to get directly
01:13:17 3 with him to find out what the problem is. I do believe
01:13:20 4 that the report authorized by Mr. Solarez [phonetically]
01:13:25 5 indicates he does haven't any reason to believe that the
01:13:27 6 transfers didn't occur, that this seems to be about the
01:13:31 7 maximum time for the registration, and that it probably
01:13:33 8 could have been sped up if people were a little more
01:13:38 9 aware of the urgency. And that's about all the insight
01:13:41 10 I can offer to the Court.

01:13:43 11 I do believe that there was a copy of the
01:13:46 12 conveyance for this particular victim provided to the
01:13:52 13 government, and I also have a copy for the Court. I
01:13:56 14 think it's a registration/recording thing. That's about
01:13:59 15 all I can tell you.

01:14:00 16 THE COURT: Okay. Let me hold for a
01:14:04 17 moment -- I mean, that's the government's concern,
01:14:07 18 right?

01:14:09 19 MS. MULHAUSER: The Government has a number
01:14:10 20 of concerns, Your Honor.

01:14:12 21 THE COURT: Why don't you go ahead.

01:14:16 22 Express them to me, and then I want -- I'm
01:14:20 23 going to wait in terms of the allocution to determine
01:14:23 24 whether or not I find acceptance, okay. Let's at least
01:14:27 25 get this part of the record and your concerns before me.

01:14:32 1 MS. MULHAUSER: Thank you, Your Honor. I
01:14:33 2 will start with broader concerns and go to smaller
01:14:35 3 concerns.

01:14:36 4 So if you look at big number 3 on this
01:14:41 5 document, it lists ten victims whose names were there
01:14:48 6 for the lawyer to talk to. Now, the Government alone
01:14:51 7 has received more deeds than that, so why there were not
01:14:55 8 more -- the rest of those victims were not on that list,
01:14:59 9 that is our first question we don't know.

01:15:01 10 The second is our concern --

01:15:03 11 THE COURT: Are those returned deeds or
01:15:05 12 deeds -- what's the status of the Government's --

01:15:08 13 MS. MULHAUSER: So that is part of the
01:15:10 14 challenge, Your Honor. We went through the 13 deeds
01:15:12 15 that we received. And of those deeds, it appears that
01:15:15 16 ten of them were at least on paper signed back to their
01:15:18 17 original owners. Three of them -- three or four of them
01:15:23 18 were not. We have offered those names to Defendant. I
01:15:27 19 actually believe I've identified a fourth one in the
01:15:30 20 letter that is dated June 10, 2016. We note the names
01:15:35 21 of those three deeds, and we explain to the Defendant
01:15:37 22 that there is nothing on those deeds showing that they
01:15:40 23 were, in fact, signed over by Defendant. They merely
01:15:42 24 show that the -- that they were signed over to victims;
01:15:46 25 they show they are still in the possession of the

01:15:49 1 Defendant. We let defense counsel know that we were
01:15:51 2 concerned about that. We have not heard progress about
01:15:54 3 that. And, in fact, of those names that we list, not
01:15:59 4 all of them were even on the list to be interviewed.
01:16:03 5 And the other ones were on the list but were living,
01:16:06 6 according to this, in too remote a province for the
01:16:11 7 lawyer to be able to speak with them. So of these three
01:16:13 8 or four that are not transferred back, we don't have any
01:16:18 9 discussion or talk with those victims.

01:16:20 10 THE COURT: We have no confirmation that the
01:16:23 11 deeds, in fact, have been returned?

01:16:25 12 MS. MULHAUSER: No. We have concerns
01:16:27 13 about -- we respect the efforts the Defense Counsel went
01:16:32 14 to, and we understand he went to great efforts; however,
01:16:35 15 part of what these victims were asked, as Your Honor
01:16:39 16 knows, we have gone to great length to protect the
01:16:41 17 victims the and their identity. So why it is -- I'm
01:16:44 18 looking at page 2 of this document -- they were asked to
01:16:47 19 give a brief deposition -- a brief deposition of their
01:16:50 20 involvement with the Defendant, which is very concerning
01:16:52 21 to us, why a representative of the Defendant who was,
01:16:56 22 according to this, putting himself --

01:16:58 23 THE COURT: I don't mean to interrupt. I
01:17:01 24 can only assume that nothing untoward may have resulted
01:17:07 25 in that situation. I know that -- I have the impression

01:17:10 1 Mr. Klucas had a number of conversations with this
01:17:17 2 individual, and I think we have to accept that -- it
01:17:24 3 might possibly be part of the protocol and procedure
01:17:29 4 that that occurs. I don't know. I don't -- I do not
01:17:33 5 apprehend a spillover was to the victims for whatever it
01:17:39 6 is or may have learned. I may be giving too much
01:17:42 7 credence to the integrity of the lawyer, but I have no
01:17:49 8 way of knowing, so I think it's fair to credit him with
01:17:52 9 having acted honestly and in good faith. I don't think
01:17:56 10 we can do any more than that.

01:17:57 11 MS. MULHAUSER: We will do that, Your Honor.

01:17:58 12 So that leaves us, of the 13 deeds we
01:18:02 13 received, there were several who were not attempted to
01:18:04 14 be interviewed. There were several who were identified
01:18:06 15 but lived too far away. So that leaves seven who were
01:18:10 16 interviewed. Of those seven, three of them either had
01:18:13 17 not received their deed back or had received a copy.
01:18:16 18 And in one case -- I'm looking at small Roman numeral
01:18:22 19 vi -- there's a claim that the document was sent by mail
01:18:26 20 to a party unknown to him in the United States and that
01:18:29 21 he is under the impression that maybe the original
01:18:32 22 document will be returned to him -- will not be returned
01:18:35 23 to him until he pays the balance of his debt, which
01:18:38 24 still stands at a high number.

01:18:41 25 Your Honor, when you combine that with the

01:18:43 1 sentence at the bottom of that page where the
01:18:46 2 investigator acknowledges that there are some
01:18:50 3 individuals that said they were charged by the
01:18:52 4 Defendant's collectors in a violent manner, the
01:18:57 5 Government still has concerns.

01:19:00 6 THE COURT: Mr. Klucas?

01:19:02 7 MR. KLUCAS: Thank you, Judge. Despite my
01:19:05 8 best efforts at clarity in my instructions to people in
01:19:12 9 Guatemala, I have XXXXXX deed.

01:19:18 10 MS. MULHAUSER: Your Honor, may we move that
01:19:21 11 any names be retroactively put under seal?

01:19:24 12 THE COURT: I agree.

01:19:25 13 MR. KLUCAS: We have the disputed deed that
01:19:28 14 the Government just referred to where it had been sent
01:19:30 15 to a party in America. That party would be me.

01:19:33 16 THE COURT: Pardon me?

01:19:34 17 MR. KLUCAS: That party would be me, and I
01:19:36 18 have it. And I'm trying to figure out with my fellow in
01:19:41 19 Guatemala what to do with it because I don't I want it.
01:19:44 20 But the transfer has certainly been completed. I asked
01:19:48 21 our expert to take every conceivable step that he could
01:19:52 22 to confirm conveyances to all of the people with whom I
01:19:56 23 was aware. And I think it's important to note that the
01:20:00 24 expert that I hired generally works on behalf of
01:20:03 25 victims. And I thought that given that background he

01:20:06 1 would be ideal for the job that I needed. And he has
01:20:11 2 given me zero indication that the conveyances have not
01:20:16 3 occurred. The only question is that some of the
01:20:20 4 registrations haven't been completed yet.

01:20:26 5 THE COURT: Let me say this. I'm going to
01:20:28 6 accept that, to the extent feasible under all the
01:20:32 7 circumstances, efforts have been undertaken in good
01:20:38 8 faith to retrieve the properties. To the extent that
01:20:41 9 that has not been accomplished completely, I can't
01:20:48 10 really say one way or the other. So despite the partial
01:20:55 11 nature of what we had all hoped would be accomplished, I
01:20:59 12 can't say that it won't be accomplished, I can't say
01:21:02 13 that it will be accomplished. So at least that effort
01:21:07 14 has been undertaken, and at least to the extent it has
01:21:10 15 been accomplished, those victims' families would appear
01:21:14 16 at least for now to be better off than they would have
01:21:19 17 been otherwise.

01:21:20 18 MR. KLUCAS: That's fair enough.

01:21:27 19 THE COURT: So in any event I'm still
01:21:29 20 withholding the assessment on the acceptance. I think
01:21:33 21 that's appropriate. I did review with your client
01:21:38 22 whether he, in fact -- you had the Presentence Report,
01:21:44 23 you reviewed it with him in Spanish?

01:21:46 24 MR. KLUCAS: I don't know that you've asked
01:21:48 25 him yet this morning, but we certainly did; on two

01:21:51 1 different occasions, actually.

01:21:52 2 THE COURT: That's fine.

01:21:54 3 Is that correct, sir --

01:21:56 4 THE DEFENDANT: Yes.

01:21:59 5 THE COURT: -- that your lawyer reviewed?

01:22:00 6 THE DEFENDANT: Yes.

01:22:00 7 THE COURT: Are you fully satisfied that
01:22:02 8 your lawyer has done all that he needs to have done to
01:22:06 9 have prepared both him and you for today's proceeding?

01:22:11 10 THE DEFENDANT: Yes, sir.

01:22:19 11 THE COURT: So at present -- hold on a
01:22:33 12 second.

01:22:35 13 (Discussion had off the record.)

01:23:18 14 THE COURT: Myrna calculates at this point
01:23:22 15 in light of the rulings I've made so far the base
01:23:25 16 offense level is a 37. That includes acceptance of
01:23:30 17 responsibility, which I'm reserving judgment on.

01:23:34 18 MS. MULHAUSER: Your Honor, that's not the
01:23:35 19 calculation that we have. The government has before
01:23:38 20 acceptance a 38.

01:23:40 21 THE COURT: Before acceptance?

01:23:42 22 MR. KLUCAS: Right.

01:23:45 23 THE COURT: And did that include the
01:23:47 24 grouping point as well?

01:23:48 25 MS. MULHAUSER: That included the grouping

01:23:49 1 point.

01:23:50 2 THE COURT: I am willing -- it's extremely
01:23:53 3 confusing. And I'm willing to accept the Government's
01:23:56 4 representation that that is the baseline -- with
01:24:02 5 acceptance, you said?

01:24:03 6 MS. MULHAUSER: Before acceptance.

01:24:05 7 THE COURT: Before acceptance.

01:24:07 8 MS. MULHAUSER: 38 before acceptance.

01:24:14 9 It does encompass our discussions at sidebar
01:24:17 10 as well.

01:24:18 11 THE COURT: It does?

01:24:20 12 MS. MULHAUSER: It does. Yes.

01:24:20 13 THE COURT: So that is coming in --

01:24:23 14 MS. MULHAUSER: So a 38, which is everything
01:24:26 15 except acceptance of responsibility.

01:24:28 16 THE COURT: So 38 minus three for
01:24:33 17 acceptance, which would be a 35 if I grant acceptance;
01:24:38 18 is that correct?

01:24:38 19 MS. MULHAUSER: That is how the Government
01:24:39 20 calculates it.

01:24:41 21 THE COURT: Mr. Klucas, would you agree with
01:24:43 22 that?

01:24:44 23 MR. KLUCAS: I would, yeah. But again --

01:24:46 24 THE COURT: Without waiving your objections.

01:24:48 25 MR. KLUCAS: Yes.

01:24:48 1 THE COURT: I'm just saying taking into
01:24:50 2 account the objections. So if it's a 38, Criminal
01:24:57 3 History Category II without acceptance, that would be
01:25:02 4 262 to 327. And if it were a 35, Criminal History
01:25:17 5 Category II, 188 to 235. Okay. Okay. On behalf of the
01:25:32 6 government, what else, if anything?

01:25:36 7 I've read the Plea Agreement. I just can't
01:25:38 8 recall. What else, if anything, does the Government --
01:25:41 9 does the Plea Agreement say with regard to a Guideline
01:25:44 10 Range, if anything? In other words, I just don't
01:25:46 11 recall.

01:25:47 12 Is it the same thing in this agreement, the
01:25:51 13 same thing as the other one; namely, a range that the
01:25:53 14 parties have agreed to, they would basically direct my
01:25:58 15 attention to and argue that I should remain within?

01:26:01 16 MS. MULHAUSER: Yes, Your Honor. The
01:26:02 17 Government -- the Plea Agreement states that the
01:26:04 18 Government will recommend the range set out in the Plea
01:26:11 19 Agreement itself, which is a -- which ends up, if you
01:26:24 20 were to include the acceptance of responsibility, at --

01:26:32 21 THE COURT: Mr. Klucas, can you help out?

01:26:35 22 MR. KLUCAS: Yes, I can. I believe we
01:26:37 23 were -- with the Plea Agreement was a stipulated Base
01:26:41 24 Offense Level before any adjustments of 32, with an
01:26:46 25 argument that the Defense lost regarding the four

01:26:49 1 additional levels for vulnerable victims, so that would
01:26:53 2 be at a 36 before acceptance and before any other
01:26:56 3 Government motion.

01:26:58 4 MS. MULHAUSER: Your Honor, the Government
01:26:59 5 agrees. So that means that if -- if the Court were to
01:27:03 6 grant acceptance, then that would put the defendant at a
01:27:06 7 31, and accordingly the Government would recommend the
01:27:10 8 high end of the range at 31, which is 151 months.

01:27:15 9 THE COURT: Okay. In other words, if I were
01:27:17 10 to remain within the Plea Agreement --

01:27:18 11 MS. MULHAUSER: That's if you were to remain
01:27:20 12 in the Plea Agreement. And, Your Honor, the Plea
01:27:24 13 Agreement is clear that Your Honor is not bound, only we
01:27:27 14 are bound in our recommendation.

01:27:28 15 MR. KLUCAS: That's standard.

01:27:30 16 MS. MULHAUSER: The only other thing that
01:27:31 17 the Government would like to do before the sentence are:
01:27:34 18 (1) Dismiss the other counts; and (2) Your Honor
01:27:37 19 received a number of victim impact statements. We don't
01:27:42 20 want to read them all into the record. There is one
01:27:44 21 more that we thought was making a particular impact that
01:27:47 22 we would like to read, Your Honor.

01:27:56 23 THE COURT: Go ahead.

01:27:56 24 MS. MULHAUSER: First the government moves
01:27:58 25 to dismiss the remaining counts against the Defendant

01:28:01 1 which are counts in the Superseding Indictment: 2, 3,
01:28:05 2 and then 5 through 11.

01:28:07 3 THE COURT: Motion granted.

01:28:08 4 MS. MULHAUSER: Thank you.

01:28:10 5 With Your Honor's permission, we would like
01:28:11 6 to read one more victim impact statement.

01:28:14 7 THE COURT: Indeed.

01:28:15 8 MS. MULHAUSER: Your Honor these are the
01:28:16 9 responses to the standard victim impact statement.

01:28:18 10 THE COURT: I'm having a little trouble
01:28:20 11 hearing you.

01:28:21 12 MS. MULHAUSER: I will try to enunciate
01:28:24 13 better. Because these are the standard questions, I
01:28:28 14 will forego reading the questions.

01:28:29 15 THE COURT: Sure. That's fine.

01:28:31 16 MS. MULHAUSER: The victim says, "From the
01:28:32 17 beginning, my family does not get along because my
01:28:35 18 parents separated and my father is the brother of my
01:28:39 19 uncle, Aroldo Castillo. When my uncle arrived in
01:28:44 20 Guatemala from the United States, my parents had already
01:28:47 21 separated, and my uncle, Aroldo Castillo, started
01:28:50 22 threatening my mother's family. In fact, he even hit
01:28:54 23 one of my uncles and other individuals who are not part
01:28:57 24 of my family, and he would humiliate people. He was
01:28:59 25 accompanied by two men that the people said were his

01:29:02 1 bodyguards. But when we came over to the United States
01:29:05 2 with our mother and he was in Guatemala, he would say
01:29:07 3 that whenever he got here to Ohio, he was going to come
01:29:11 4 and harm us."

01:29:11 5 THE COURT: He was going to?

01:29:13 6 MS. MULHAUSER: "Come and harm us. But he
01:29:15 7 was not able to cross the border anymore. That's why we
01:29:19 8 and our mother are all right."

01:29:23 9 This is the answer to the second question
01:29:25 10 below: "We, along with our mother, have not suffered
01:29:27 11 any wounds from this crime. We have not gone to any
01:29:30 12 hospitals or clinics. We have not had any physical
01:29:33 13 wounds. We have not been attacked.

01:29:36 14 The answer to question 3 is, "First of all,
01:29:39 15 when I arrived in the United States, I started working
01:29:42 16 at a chicken farm. I worked there six months until all
01:29:46 17 this happened with Aroldo Castillo and the police came
01:29:50 18 into my house and took me to a hotel. And there they
01:29:54 19 told me I didn't have to work anymore and that I had to
01:29:58 20 start going to school, and I have been going to school
01:30:00 21 for one year now."

01:30:04 22 The answer to the fourth question is, "I
01:30:06 23 want to say something here. When I was working, they
01:30:09 24 would pay us 3.75 for one little cart, and the work is
01:30:16 25 very hard. They had a lot of miners there, and they

01:30:19 1 didn't have papers in order to work. And the miners
01:30:22 2 that my Uncle Aroldo brought to the United States, he
01:30:24 3 would talk to Mr. Conrado Salgado so they would have
01:30:28 4 work by the time they arrived in Ohio. And they would
01:30:31 5 charge us between \$30 and \$35 a week to take us to work
01:30:34 6 and to return us home.

01:30:36 7 THE COURT: That was a taxi fee, as it were?

01:30:40 8 MS. MULHAUSER: Yes, Your Honor.

01:30:40 9 The only other thing I would add to this is
01:30:43 10 at the time the raid was done on the trailers, this
01:30:46 11 victim was 15 years old.

01:30:53 12 THE COURT: Anything further on behalf of
01:30:55 13 the Government?

01:30:56 14 MS. MULHAUSER: Nothing further, Your Honor.

01:30:57 15 THE COURT: Mr. Klucas?

01:30:59 16 MR. KLUCAS: Thanks, Judge. May it please
01:31:01 17 the Court. I've had the opportunity to sit through
01:31:06 18 everybody's sentencing. I sat through the sentencing of
01:31:09 19 the first two defendants back in April. I sat through
01:31:13 20 the vast majority of the earlier sentencing this
01:31:16 21 morning. I couldn't help but noting there was an
01:31:19 22 inordinate amount of fobbing off of blame from the other
01:31:24 23 defendants.

01:31:25 24 THE COURT: And I'm disregarding and
01:31:27 25 discounting her attribution to the Defendant. I think

01:31:33 1 that there's ample display of his involvement in the
01:31:39 2 materials previously prepared and of which you were
01:31:42 3 aware. He was not present to hear any of that. I think
01:31:45 4 it would be fundamentally unfair to him for me to pay
01:31:49 5 any attention to what she said about his conduct.

01:31:52 6 MR. KLUCAS: I appreciate that. That's not
01:31:54 7 really why I was saying that, but I appreciate that.

01:31:57 8 I wanted to do indicate to the Court that
01:31:59 9 the expectation here this afternoon would be just the
01:32:03 10 opposite, that I expect Mr. Castillo-Serrano to stand up
01:32:07 11 in front of the Court and own his behavior, which is
01:32:10 12 something that I did not see not only this morning, but
01:32:13 13 from the other defendants. I think it's meaningful
01:32:16 14 given the circumstances here, and I trust that the Court
01:32:19 15 will agree with my characterization after Mr.
01:32:22 16 Castillo-Serrano exercises his allocution.

01:32:26 17 We wrote a 12- or 13-page sentencing
01:32:29 18 memorandum, and I think I said most of what I needed to
01:32:31 19 say there. I'm not going to repeat it.

01:32:35 20 It seems to me that there is some question
01:32:38 21 right now regarding the acceptance of responsibility, at
01:32:41 22 least to what extent the Court might recognize that.
01:32:43 23 The only thing that I want to add to what has already
01:32:47 24 been said is that nobody else was party to Mr.
01:32:52 25 Castillo-Serrano talking long distance to his family and

01:32:58 1 to this so-called Guatemalan lawyer indicating the
01:33:04 2 urgency, necessity, and desire for him to divest himself
01:33:09 3 of any of this property. I was party to that. We got a
01:33:16 4 special dispensation from the sheriff; we were able to
01:33:19 5 take a cell phone into the jail. I heard all four
01:33:22 6 conversations. So that if there is any residual doubt
01:33:25 7 on the part of the Judge or on the part of Your Honor as
01:33:29 8 to whether Mr. Castillo-Serrano accepts responsibility,
01:33:32 9 I hope I've been in front of this Court long enough for
01:33:35 10 my representation to have some degree of credibility.

01:33:39 11 THE COURT: It does. Of course it does.

01:33:41 12 MR. KLUCAS: He was screaming. That's all I
01:33:44 13 can tell you.

01:33:45 14 Even though at the end of the sentence Mr.
01:33:47 15 Castillo-Serrano is going to be deported, there's little
01:33:50 16 question here that a significant prison sentence is not
01:33:53 17 only going to be handed down, but is warranted. And not
01:33:57 18 only is that necessary for the punishment of Mr.
01:33:59 19 Castillo-Serrano, but as the Court alluded to earlier
01:34:03 20 today, there's a significant deterrence factor here not
01:34:07 21 only for Mr. Castillo-Serrano, but for any others that
01:34:11 22 are interested in filling the void that it appears to me
01:34:15 23 Trillium Egg so willingly exploits. If there was a way
01:34:20 24 for this Court to deter Trillium Egg, I'm sure that they
01:34:23 25 would. I've been doing this work long enough to know

01:34:26 1 that for anybody to suggest that the home office didn't
01:34:29 2 know what was going on is ridiculous.

01:34:33 3 I think really where the question for
01:34:35 4 sentencing purposes is: Where does this really fit in
01:34:39 5 the spectrum of conduct that we as a society want to
01:34:42 6 discourage. And I know that the Government lawyers
01:34:46 7 don't really know me all that well, but Your Honor does,
01:34:49 8 and you know what the complexion of my practice is.
01:34:52 9 There's been multiple-double-digit capital defenses, and
01:34:56 10 probably 30-plus non-capital homicides, and I really
01:35:02 11 think after all these years I have a good perspective of
01:35:05 12 what's really bad. And I think it's important for the
01:35:08 13 Court to note that I agree that this is bad. It's not
01:35:11 14 murder sentence bad, but it is definitely bad. And I
01:35:15 15 don't want anything that I say here this afternoon to be
01:35:17 16 perceived by the Court or the Government for that matter
01:35:20 17 as minimizing what has transpired here.

01:35:26 18 As to the last victim impact statement
01:35:28 19 alluded to, there isn't anybody that -- I don't have any
01:35:31 20 evidence of anybody physically --

01:35:35 21 THE COURT: Apparently in one instance in
01:35:37 22 which he threatened one of the victims that if he didn't
01:35:40 23 stay in lines that were, he would shoot.

01:35:45 24 MR. KLUCAS: I'm not sure that I would
01:35:47 25 consider that to be a credible threat. I think what we

01:35:49 1 thought really occurred is listed in the relevant
01:35:52 2 conduct of the plea agreement. I believe that is the
01:35:55 3 evidence with which we would --

01:35:59 4 THE COURT: What does that say?

01:36:00 5 MR. KLUCAS: It says he would yell at them,
01:36:04 6 demean them, threaten them. But I don't have any
01:36:06 7 physical injury here. And again --

01:36:09 8 THE COURT: That is correct, except for
01:36:11 9 injuries suffered in the course of employment.

01:36:13 10 MR. KLUCAS: I understand that. And I
01:36:14 11 wanted to add something to that too. That I come from,
01:36:19 12 on my father's side, a long family history of farming.
01:36:22 13 And farming is dirty and dangerous. I'm not aware of a
01:36:27 14 farm anywhere that isn't, regardless of the context.

01:36:30 15 But that doesn't mean because there's no
01:36:32 16 actual injury that there isn't any fallout here. And
01:36:35 17 the impact on the victims is exactly what I would have
01:36:38 18 expected. There's nothing more impactful that has been
01:36:42 19 disclosed to the Defense, and certainly nothing less.
01:36:45 20 This is exactly what we would have expected. These are
01:36:48 21 teenage kids; they're scared; they're uncertain; they're
01:36:52 22 in a strange land; they're not getting any money.
01:36:54 23 Totally understandable. So to say there's no harm at
01:36:58 24 all, that's not really what we're saying.

01:37:01 25 I do want to point out to the Court that Mr.

01:37:03 1 Castillo-Serrano was in Guatemala for the last year and
01:37:07 2 a half or so of the conspiracy as pled in the
01:37:11 3 indictment. I understand that other defendants are
01:37:15 4 saying that Mr. Castillo-Serrano was directing the show
01:37:18 5 by phone from Guatemala. I believe that is partially
01:37:21 6 true, certainly not to the extent that those who were
01:37:25 7 looking to engage in self-preservation would suggest.
01:37:31 8 And I do want to point out a couple of things that were
01:37:33 9 reflected in -- did you number it Court's Exhibit 2, or
01:37:37 10 Court's Exhibit B, the report from this morning? What
01:37:42 11 was it?

01:37:42 12 MS. MULHAUSER: It was Court's Exhibit 2.

01:37:45 13 THE COURT: Whichever, B.

01:37:53 14 MR. KLUCAS: It's clear to me from this
01:37:55 15 report that people expected to pay out of their wages
01:37:58 16 for repayment, and that's reflected in the report. The
01:38:02 17 people that Mr. Solarez interviewed all willingly
01:38:08 18 offered that up. Clearly the problem is, as I indicated
01:38:12 19 to Mr. Castillo-Serrano from day one, was the exorbitant
01:38:16 20 percentage of funds taken for repayment. But the idea
01:38:21 21 that the people that were smuggled up into America and
01:38:25 22 their families in Guatemala did not know that there were
01:38:28 23 going to be -- that that was going to be is not born out
01:38:30 24 by the interviews. These are firsthand interviews by a
01:38:35 25 man who works for victims, which is why I hired him. I

01:38:39 1 wanted his perspective, not somebody from the Defense.

01:38:43 2 The other thing that I thought was
01:38:45 3 interesting in the report submitted this morning is
01:38:48 4 nobody that this gentleman talked to was afraid of
01:38:53 5 retribution, revenge, or any of the things that had been
01:38:58 6 alluded to by way of some other information.

01:39:03 7 THE COURT: I'll be quite honest. I tend
01:39:06 8 to discount that. I think almost every victim expressed
01:39:09 9 that apprehension.

01:39:10 10 MR. KLUCAS: I can understand that. And the
01:39:12 11 Court certainly will make its own credibility
01:39:15 12 assessment. I'm pointing out that there's an interview
01:39:18 13 submitted to the Court firsthand where nobody said that.
01:39:21 14 For purposes of balance, you can make your own decision.

01:39:25 15 Last -- and I don't expect this to make a
01:39:28 16 huge difference, but I know that the Court is generally
01:39:30 17 interested in this sort of thing, which is throughout
01:39:33 18 these proceedings Mr. Castillo-Serrano had indicated a
01:39:37 19 self-reported significant problem with alcohol abuse.
01:39:41 20 We have given the Court some documentation from the
01:39:44 21 county jail indicating his participation in sober living
01:39:48 22 and an assessment of that participation by counselors at
01:39:53 23 the county jail.

01:39:55 24 I know the Court has him pegged at a
01:39:58 25 Criminal History II. I cannot get off my opinion that

01:40:02 1 that's overstated. He has one DUI conviction. But I'm
01:40:06 2 not sure it's really going to make that much difference.

01:40:08 3 THE COURT: It came in at a III, and I think
01:40:11 4 II is the correct calculation.

01:40:13 5 MR. KLUCAS: He's been in continuous custody
01:40:16 6 since December of '14. I would think the Court should
01:40:19 7 bear that in mind.

01:40:22 8 And I think totally understanding the
01:40:26 9 outrage that has been expressed by the Court in earlier
01:40:29 10 proceedings and in other conversations, I would just ask
01:40:33 11 the Court that in the overall context of criminal
01:40:37 12 behavior, the Court keep it in the appropriate
01:40:40 13 perspective, sentence at the low end of the guideline
01:40:43 14 range, because I believe that that really would be a
01:40:47 15 punishment commensurate with the offense to satisfy the
01:40:52 16 principles and purposes of sentencing at 18 USC,
01:40:56 17 3553(a). Thank you.

01:41:00 18 THE COURT: Sir, you have the right to speak
01:41:02 19 on your own behalf before I pronounce sentence.

01:41:12 20 THE DEFENDANT: First, I apologize because I
01:41:14 21 feel very nervous. For me this is something -- I've
01:41:22 22 never been in this trouble before. And now I find
01:41:26 23 myself in this situation. And I feel obligated to write
01:41:33 24 this because I feel in my mind that I'm not going to
01:41:40 25 remember what I'm planning on saying to Your Honor.

01:41:43 1 Hello, with all the respect you deserve,
01:41:50 2 Honorable Judge. I hope that this is a good day for you
01:41:58 3 and for all the audiences accompanying us, and that God
01:42:03 4 will bless each one of you.

01:42:10 5 Seriously, Your Honor, I am totally sorry
01:42:17 6 for all of this problem that I've caused. I give you a
01:42:25 7 big apology. I give a big apology to the victims.

01:42:33 8 THE COURT: I didn't hear that.

01:42:33 9 THE DEFENDANT: I give a big apology to the
01:42:35 10 victims who are my family members, my neighbors from my
01:42:44 11 same town. They're not present here. I personally take
01:42:56 12 all responsibility for the whole large problem I have
01:43:05 13 caused breaking the law in this country, crossing the
01:43:16 14 border with my countrymen. The situation my in my
01:43:23 15 country is very bad.

01:43:31 16 Your Honor, I thank you for the opportunity
01:43:33 17 that you've given me, my attorney, and my family to put
01:43:40 18 things in order what was missing. I put all of my trust
01:43:50 19 in my attorney and in my family. I can't do very much
01:43:59 20 because I'm locked up in Lucas County.

01:44:04 21 Your Honor, I apologize for being so bold
01:44:12 22 telling you a little bit about my situation. Sir, I
01:44:17 23 have four children, three children in Guatemala, and a
01:44:23 24 little girl who was born here in this country. Thank
01:44:34 25 God I have both my parents alive. But they're too

01:44:39 1 elderly. I'll never make this mistake again, Your
01:44:54 2 Honor, and not returning to this country.

01:45:01 3 I know that my freedom is in your hands, and
01:45:07 4 I've asked God for hundreds of days to give you the
01:45:12 5 wisdom so that you can take the situation of my case.
01:45:21 6 Thank you.

01:45:21 7 THE COURT: How old is the Defendant's
01:45:23 8 oldest child?

01:45:30 9 THE DEFENDANT: In February he's going to
01:45:31 10 turn 18.

01:45:34 11 THE COURT: The next oldest?

01:45:37 12 THE DEFENDANT: Fourteen.

01:45:38 13 THE COURT: The same age as some of the
01:45:40 14 children that you caused to endure those conditions,
01:45:44 15 right?

01:45:47 16 THE DEFENDANT: Yes, sir.

01:45:50 17 THE COURT: How would you have felt if you'd
01:45:54 18 entrusted your 14-year-old to someone like yourself, and
01:45:59 19 your child were put in the conditions in which you
01:46:03 20 placed the victims in this case?

01:46:14 21 THE DEFENDANT: I would have felt bad. And
01:46:16 22 I ask -- and I apologize largely to those people because
01:46:22 23 I made that mistake.

01:47:04 24 THE COURT: Remind me again, counsel, where
01:47:06 25 we were without acceptance. I made that note several

01:47:10 1 times.

01:47:10 2 MS. MULHAUSER: Your Honor, we were at 38
01:47:12 3 before acceptance.

01:47:24 4 THE COURT: I will grant acceptance. That
01:47:27 5 will result in a guideline range of 188 to 235 months.
01:47:36 6 Mr. Klucas, anything further from your client?

01:47:38 7 MR. KLUCAS: No, Your Honor. Thank you.

01:47:39 8 THE COURT: Counsel for the Government?

01:47:41 9 MS. MULHAUSER: Nothing further.

01:47:46 10 THE COURT: I'll impose a guideline sentence
01:47:48 11 of 188 months. That's the low end of the guideline
01:47:51 12 range. I think -- I certainly hope that's sufficient
01:47:54 13 but not greater than necessary to accomplish the
01:47:56 14 purposes of sentencing. I would like, in addition to
01:48:06 15 the other matters that I've taken into consideration, I
01:48:10 16 want to read what some of the victim impact statements
01:48:13 17 that I received today attribute to this Defendant.

01:48:18 18 This is -- I'm reading from -- the names are
01:48:44 19 redacted. I'm sorry, I'm having some difficulty
01:48:48 20 determining which statement this is. Let me do it this
01:48:50 21 way. Let me tell you which number it is in the sequence
01:48:54 22 I have here. I believe it's number 4, and it's on
01:49:35 23 page -- the portion I'm reading from is page number 3.

01:49:41 24 "In the little bit that he," this Defendant,
01:49:45 25 "would bring me really didn't even last me the week.

01:49:52 1 And he charged me double what the food cost. And
01:49:59 2 besides, I was not the only one who lived with him in
01:50:05 3 the trailer. There were six of us living in the trailer
01:50:10 4 that belonged to him. I did suffer a lot from living
01:50:20 5 with him in one of his trailers. And I couldn't go live
01:50:28 6 in another trailer because he threatened me, and I was
01:50:36 7 putting up with living with him since I had family in
01:50:40 8 Guatemala. And when I finished paying him, he still got
01:50:46 9 mad at me because I would play with my friends in the
01:50:53 10 afternoon. So then I decided to go live in another
01:51:11 11 trailer that didn't belong to him. So then he realized
01:51:15 12 that I was taking my things out, so then he went and
01:51:20 13 stole my car that I had because I went to live in a
01:51:25 14 trailer that didn't belong to him."

01:51:56 15 The next page, "Well, the truth is that this
01:51:59 16 crime has affected me a lot. Because when I lived with
01:52:06 17 Aroldo Serrano Castillo before, he sold me some
01:52:12 18 counterfeit papers so that I can work. Those
01:52:20 19 counterfeit papers, he told me that I had to pay him
01:52:24 20 \$1,500, that I could work with those papers. And since
01:52:32 21 I couldn't say anything to him, I just had to obey and
01:52:38 22 do what he told me because he had threatened and
01:52:43 23 extorted me."

01:52:48 24 That was number four, I think.

01:53:02 25 The next victim's statement, page 3. I'm

01:53:06 1 going to delete the name that's referenced in there.
01:53:10 2 "Recently" someone else, the name deleted, "was talking
01:53:22 3 to" -- excuse me. That does not refer to this
01:53:25 4 defendant.

01:54:10 5 I think this one should be read from; it's
01:54:13 6 the last one. It's not on the Government form. There
01:54:16 7 are two that are kind of similar in recounting inability
01:54:20 8 to communicate with family and so forth.

01:54:23 9 MS. MULHAUSER: The one from victim 1 that
01:54:26 10 we read earlier, Your Honor?

01:54:27 11 THE COURT: Yes. That is the one you read
01:54:29 12 from. Okay.

01:54:40 13 It's the judgment of this Court the
01:54:41 14 Defendant be and hereby is committed to the Custody of
01:54:44 15 the Bureau of Prisons to serve a term of 188 months.
01:54:47 16 That is the low end of the applicable guideline range.
01:54:52 17 That will be followed -- you'll be remanded forthwith
01:54:56 18 following completion of your sentence to the custody of
01:55:01 19 Immigration and Customs Enforcement for deportation to
01:55:03 20 Guatemala. Upon your release from custody you'll
01:55:07 21 commence serving a term of three years supervised
01:55:10 22 release, the only condition of which will be that you
01:55:12 23 not return to this country within that period.

01:55:15 24 A bit of advice and warning: Come back,
01:55:18 25 you'll get caught, and you will be prosecuted, and you

01:55:21 1 will spend a lot more time in prison than most people
01:55:25 2 who come back after being deported. I would imagine the
01:55:29 3 government would urge, and if I were the Judge I would
01:55:32 4 impose the maximum potential penalty for felony illegal
01:55:36 5 reentry following deportation. Simply a bit of advice.

01:55:42 6 Early in these proceedings when you were not
01:55:45 7 present I expressed my views about the nature of the
01:55:47 8 crimes in which you were so actively engaged and for
01:55:52 9 which you were primarily responsible. I won't repeat
01:55:58 10 all of those statements; I will, simply, however, review
01:56:04 11 the factors under Section 3553(a) that I believe justify
01:56:11 12 the sentence that I have imposed.

01:56:15 13 First is the serious nature of the offense.
01:56:20 14 I think honestly, sir, had this happened to your
01:56:24 15 14-year-old child or your 18-year-old child, you'd be
01:56:28 16 screaming in outrage that a child of yours would be
01:56:32 17 treated like this. And yet that's how you treated the
01:56:35 18 children of others in your own hometown. You lied to
01:56:40 19 them; you tricked them; you deceived them; you profited
01:56:46 20 from the misery in which they found themselves and the
01:56:49 21 misery and depravity into which you placed them and kept
01:56:54 22 them. Your crimes of smuggling, your crimes of slavery,
01:57:11 23 your crimes of captivity create a picture of absolute
01:57:21 24 moral indifference to your fellow human beings.
01:57:25 25 Especially to children, at least one of whom was 14, is

01:57:31 1 that correct, and brought to this country?

01:57:32 2 MS. MULHAUSER: Yes, Your Honor.

01:57:33 3 THE COURT: Another of whom was 15; is that
01:57:36 4 correct?

01:57:36 5 MS. MULHAUSER: I believe there were several
01:57:38 6 at 15.

01:57:39 7 THE COURT: Of the ten victims noted in the
01:57:42 8 indictment, of the upwards of 35 victims total for whose
01:57:48 9 treatment under the squalid and inhumane conditions
01:57:55 10 under which you placed them, of the ten noted in the
01:57:58 11 indictment, eight were under the age of 18 when you
01:58:05 12 caused them to be brought here. I simply cannot find
01:58:10 13 words sufficient to express how serious I think your
01:58:15 14 criminal conduct was. It is clear to me that you
01:58:22 15 profited substantially. It is my understanding that you
01:58:28 16 had to pay those who actually got these people across
01:58:34 17 the border, the coyotes, but I have no doubt that your
01:58:41 18 conduct generated an income substantially in excess of
01:58:45 19 what your obligations to those people were. Even after
01:58:54 20 payment, close quote, had been received, you kept
01:58:57 21 pocketing the fruits of their labor, labor under
01:59:02 22 conditions that no person should be subjected to, much
01:59:13 23 less a child of 14 or 15.

01:59:20 24 I hope that my sentence enhances respect for
01:59:22 25 the law and how the law treats criminals like yourself.

01:59:31 1 I believe that the sentence is just. As I said during
01:59:39 2 the earlier proceeding, it is my fervent hope that this
01:59:43 3 sentence will serve as a deterrent to all who become
01:59:47 4 aware of it. And I hope that the Government will see to
01:59:50 5 it that the nature of your conduct and its consequences,
01:59:53 6 both upon the victims and now upon yourself, becomes
01:59:59 7 broadly and as widely known as possible to others who
02:00:06 8 may be tempted to engage in the same kind of conduct and
02:00:11 9 to tolerate and to acquiesce and themselves to profit
02:00:16 10 from that conduct.

02:00:20 11 Mr. Klucas has speculated about who probably
02:00:24 12 profited the most. I have no comment upon that. I
02:00:28 13 simply note his comments.

02:00:34 14 I hope that the sentence serves as an
02:00:37 15 adequate deterrence. I truly am troubled by the
02:00:40 16 possibility, which I think is fairly distinct, that once
02:00:43 17 you are out you may still have access to your ill-gotten
02:00:51 18 gains and income. Unfortunately, there's nothing more I
02:00:57 19 can do about that.

02:01:02 20 I hope that the severity of the sentence
02:01:04 21 does not have a backlash effect and adversely affect
02:01:09 22 those in your hometown who you victimized and that
02:01:16 23 they're not subject to retaliation which the record
02:01:20 24 suggests you threatened from time to time to impose.
02:01:30 25 But I am trying at the very least by incapacitating you

02:01:35 1 for an extensive period of time to see to it that you
02:01:39 2 cannot directly be involved in that kind of retaliatory
02:01:43 3 conduct. I'm also trying to protect the public to the
02:01:48 4 extent that includes, as I believe it does, others who
02:01:55 5 are being victimized in this country, to the extent they
02:01:59 6 are, in the way that you victimized your victims and how
02:02:02 7 you profited from them. Although I rarely if ever in
02:02:10 8 the past have, except for this morning, have given a
02:02:13 9 sentence for retributive purposes, this is one of the
02:02:21 10 rare times when I think that's an entirely appropriate
02:02:26 11 consideration in determining a sentence that is
02:02:28 12 sufficient but not greater than necessary to accomplish
02:02:30 13 the purposes of sentencing.

02:02:32 14 I think those that become aware of the
02:02:34 15 nature of your conduct -- and I'm undertaking to see the
02:02:38 16 that awareness can occur by publishing for the first
02:02:41 17 time ever or making part of the open record the portions
02:02:46 18 of the Presentence Reports that detail your conduct. I
02:02:52 19 also anticipate, unless there's an objection from the
02:02:55 20 Government, making available portions of the Factual
02:03:01 21 Basis Statement in your Plea Agreement so that the
02:03:07 22 public too can become aware of the nature of your
02:03:14 23 conduct and the extent of its depravity and inhumanity.
02:03:20 24 I think those who become aware of this sentence and my
02:03:27 25 reasons for it will agree with me that if there is a

02:03:30 1 case that requires punishment for punishment's sake to
02:03:35 2 express moral outrage that I feel and I think any
02:03:40 3 sensible rationale decent human being would feel upon
02:03:46 4 becoming aware of what you did to these young people,
02:03:50 5 they would agree that this is a case in which
02:03:55 6 retribution, punishment simply for the purpose of
02:03:59 7 punishing somebody is entirely justified and
02:04:03 8 appropriate.

02:04:12 9 I'll ask the Government if there's anything
02:04:14 10 further in light of the Section 3553(a) factors that it
02:04:18 11 believes I should express as reasons for my sentence.

02:04:23 12 MS. MULHAUSER: Not in light of the 3553(a)
02:04:25 13 factors, but we would ask that Your Honor address
02:04:28 14 restitution and the \$5,000 special assessment. The
02:04:31 15 Government would argue that the Defendant is not
02:04:34 16 indigent and is, in fact, required the to pay that.

02:04:37 17 THE COURT: I think there's good reason to
02:04:38 18 believe he is not. There will be a \$5,000 special
02:04:41 19 assessment.

02:04:42 20 MS. MULHAUSER: We would also ask that he be
02:04:45 21 made jointly and severally liable for restitution.

02:04:48 22 THE COURT: With regard to the restitution
02:04:49 23 issue, as I say, as promptly as you can, please advise
02:04:53 24 DeAnna of the amount that's due, still remains due and
02:04:57 25 owing to the victims. Candidly, I think I'm reading

02:05:00 1 your statements, they have understated the amounts taken
02:05:04 2 from them in light of all the circumstances that are to
02:05:09 3 be observed within the Presentence Reports and the
02:05:13 4 factual basis for the pleas; but nonetheless, once
02:05:16 5 that -- you've gotten those figures --

02:05:26 6 DeAnna says the special assessment should be
02:05:28 7 \$5,400. That's what it will be. Thank you, DeAnna.
02:05:33 8 But there will also be a joint and several obligation
02:05:36 9 for the remainder of the restitution that's due and
02:05:38 10 owing.

02:05:44 11 I think I've already indicated you will be
02:05:46 12 remanded forthwith to the custody of Immigration and
02:05:50 13 Customs Enforcement upon completion of this sentence,
02:05:53 14 which you will get credit for time served.

02:05:58 15 MS. MULHAUSER: We would ask you to address
02:06:00 16 the appeal rights as well.

02:06:01 17 THE COURT: You've waived, given up, your
02:06:04 18 right to appeal your conviction and your sentence except
02:06:07 19 under very limited circumstances. You should understand
02:06:09 20 that if grounds to appeal appear to exist, discuss that
02:06:13 21 with Mr. Klucas. If you do desire to file a notice of
02:06:16 22 appeal, you must do so within 14 days of the entry by me
02:06:20 23 of my judgment, which will occur today or tomorrow. You
02:06:24 24 should also understand that if you file a notice of
02:06:27 25 appeal in violation of your promise not to do so in the

02:06:31 1 plea agreement, the Government is not bound by any
02:06:34 2 promises or commitments it has made to you at any time
02:06:38 3 whatsoever and that it can resume prosecution of all
02:06:43 4 counts as charged in the superseding indictment, and I
02:06:46 5 would expect that is what it would do.

02:06:52 6 Does either party have any objection to any
02:06:55 7 part of these proceedings not previously made?

02:06:57 8 MS. MULHAUSER: The Government does not.

02:06:58 9 MR. KLUCAS: Nor does the Defense.

02:07:00 10 THE COURT: Okay. That will conclude these
02:07:13 11 proceedings.

02:07:27 12 (Concluded at 1:40 p.m.)

13 - - -

14

15 **C E R T I F I C A T E**

16

17 I certify that the foregoing is a correct transcript
18 from the record of proceedings in the above-entitled
19 matter.

20

21 /s/ Tracy L. McGurk_____

____8/11/16____

22 Tracy L. McGurk, RMR, CRR

Date

02:08:00 23

02:08:00 24

25